



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

HD:hd
Docket No: 07247-99
10 February 2000

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy

Subj: LT [REDACTED], USN [REDACTED]
REVIEW OF NAVAL RECORD

Ref: (a) Title 10 U.S.C. 1552

Encl: (1) DD Form 149 dtd 23 Nov 99 w/attachments
(2) PERS-85 memo dtd 21 Jan 00
(3) Subject's ltr dtd 10 Feb 00
(4) Subject's naval record

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, filed enclosure (1) with this Board requesting, in effect, that the applicable naval record be corrected by removing his failures of selection for promotion before the Fiscal Year (FY) 99 and 00 Lieutenant Commander Line Selection Boards, so as to be considered by the selection board next convened to consider officers of his category for promotion to lieutenant commander as an officer who has not failed of selection for promotion to that grade. Because of the failures of selection for promotion, he is scheduled to be involuntarily discharged no later than 1 March 2000.

2. The Board, consisting of Ms. Humberd and Nofziger and Mr. Taylor, reviewed Petitioner's allegations of error and injustice on 10 February 2000, and pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, naval records, and applicable statutes, regulations and policies.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice, finds as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.

b. On 10 August 1989, when Petitioner was an ensign, he received a punitive letter of admonition at nonjudicial punishment (NJP). The letter became a part of his official record. On 22 November 1999, after he had failed of selection by the FY 99 and 00 promotion boards, his then current commanding officer set aside the NJP. This commanding officer was not the same one who had imposed the NJP, nor was he assigned to the same command to

which Petitioner had belonged when he received the NJP. Petitioner maintains that the punitive letter caused his failures of selection, and that the set aside action warrants their removal.

c. In correspondence attached as enclosure (2), the Navy Personnel Command office having cognizance over active duty promotions has recommended approval of Petitioner's request, stating that "Removal of the punitive letter substantially improves the promotion competitiveness of his record amongst his peers."

d. Enclosure (3) is a letter from Petitioner clarifying that the reason the NJP was not set aside sooner was that he did not learn, until after the results of the FY 00 board had been announced, that his then current commanding officer had authority to set aside the NJP. He said none of the people he talked to over the course of 10 years were aware of this. Finally, he stated that the punitive letter was "the only factor in an otherwise exemplary record that hindered [his] promotion."

CONCLUSION:

Upon review and consideration of all the evidence of record, and especially in light of the contents of enclosures (2) and (3), the Board finds the existence of an injustice warranting the following corrective action.

RECOMMENDATION:

a. That Petitioner's naval record be corrected so that he will be considered by the earliest possible selection board convened to consider officers of his category for promotion to lieutenant commander as an officer who has not failed of selection for promotion to that grade.


b. That any discharge or other action based in any way on Petitioner's failures of selection before the Fiscal Year 99 and 00 Lieutenant Commander Line Selection Boards be cancelled and, if necessary, that related documentation be removed from his record.

c. That any material or entries inconsistent with or relating to the Board's recommendation be corrected, removed or completely expunged from Petitioner's record and that no such entries or material be added to the record in the future.


d. That any material directed to be removed from Petitioner's naval record be returned to the Board, together with a copy of this Report of Proceedings, for retention in a confidential file maintained for such purpose, with no cross reference being made a part of Petitioner's naval record.

4. Pursuant to Section 6(c) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(c)) it is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN
Recorder


JONATHAN S. RUSKIN
Acting Recorder

5. Pursuant to the delegation of authority set out in Section 6(e) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(e)) and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.


W. DEAN PFEIFFER
Executive Director

7247-99



DEPARTMENT OF THE NAVY
NAVY PERSONNEL COMMAND
5720 INTEGRITY DRIVE
MILLINGTON TN 38055-0000

5420
Ser 85/0112
21 Jan 00

MEMORANDUM FOR BCNR

Via: BUPERS/BCNR Coordinator

Subj: [REDACTED] AND, USN [REDACTED]

Encl: (1) BCNR File

1. [REDACTED] was eligible and his record was reviewed before the FY-99 and FY-00 Active Lieutenant Commander Line Promotion Selection Boards. He was not selected. He requests removal of his failures of selection based on his belief that the punitive letter in his record resulted in each failure. The letter was set aside after the FY-00 board's adjourning.

2. [REDACTED]'s request is supported. Removal of the punitive letter substantially improves the promotion competitiveness of his record amongst his peers. It shall be further noted that official separation orders have been issued [REDACTED] directing that he be discharged no later than 1 March 2000. Thus, urgency of BCNR conclusion in this matter is strongly recommended. The FY-01 Active-Duty Lieutenant Commander Line Promotion Selection Board is scheduled to convene on 25 April 2000.

3. Recommend removal of his failures of selection.

[REDACTED]

BCNR Liaison, Officer Promotions and
Enlisted Advancements Division